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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 PLAN B LEISURE, INC.

12 Plaintiff,

13 v.

14 HUGH WAIN SWAPP et al.,

15 Defendants.

Case No. 8:12-cv-1422-ODW(AGR_x)

**ORDER GRANTING MOTION TO
DISMISS [26]**

16 Defendant WorldPay US, Inc.'s Motion to Dismiss Plaintiff Plan B Leisure,
17 Inc.'s First Amended Complaint is pending before the Court. (ECF No. 26.) Once
18 again, Plaintiff failed to timely oppose the Motion. Such inaction may be deemed
19 consent to the granting of the motion. L.R 7-12; *see* L.R. 7-9.

20 The Court has reviewed Plaintiff's First Amended Complaint and has
21 considered WorldPay's arguments in support of its Motion. For the reasons discussed
22 in WorldPay's motion papers, the Court hereby **GRANTS** the Motion to Dismiss.

23 And although Defendants Hugh Wain Swapp and Community Merchant
24 Solutions LLC did not join in the pending Motion, the First Amended Complaint is
25 nevertheless dismissed against them as they are in a position similar to that of the
26 moving Defendants. *Silverton v. Dep't of the Treasury*, 644 F.2d 1341, 1345 (9th Cir.
27 1981) ("A District Court may properly on its own motion dismiss an action as to the
28 defendants who have not moved to dismiss where such defendants are in a position


1 similar to that of moving defendants or where claims against such defendants are
2 integrally related.”).

3 Further, based on the deficiencies in the First Amended Complaint and
4 Plaintiff’s failure to timely oppose two motions to dismiss, the Court finds that any
5 amendment would be futile.

6 Accordingly, Plaintiff’s First Amended Complaint is **DISMISSED WITH**
7 **PREJUDICE**. The Clerk of Court shall close this case.

8 **IT IS SO ORDERED.**

9 February 20, 2012.

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12 **OTIS D. WRIGHT, II**
13 **UNITED STATES DISTRICT JUDGE**
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